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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED AT 2 P.M. EST
TUESDAY, DECEMBER 11, 1973

STATEMENT OF
ELMER B. STAATS
COMPTROLLER GENERAL OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON LEGISLATION AND MILITARY OPERATIONS OF THE
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
ON THE
PROPOSED "FEDERAL ENERGY ADMINISTRATION ACT"
H.R. 11793

I WAS PLEASED TO RESPOND TO YOUR REQUEST TO PRESENT MY VIEWS ON H.R. 11793 WHICH WOULD ESTABLISH A FEDERAL ENERGY ADMINISTRATION, A PROPOSAL TRANSMITTED TO THE CONGRESS ONLY WITHIN THE LAST FEW DAYS. WHILE I HAVE NOT HAD AN OPPORTUNITY TO ANALYZE THE PROPOSAL IN AN EXHAUSTIVE MANNER, I HAVE SEVERAL COMMENTS WHICH MAY BE OF ASSISTANCE TO THE COMMITTEE IN ITS CONSIDERATION OF THIS PROPOSAL.

THE FUNCTION OF THE FEDERAL ENERGY ADMINISTRATION AS SET FORTH IN SECTION 3 IS A BROAD ONE, NAMELY, FOR "ASSURING THAT ADEQUATE PROVISION IS MADE TO MEET THE ENERGY NEEDS OF THE NATION FOR THE FORESEEABLE FUTURE." THE ADMINISTRATION WOULD "PLAN, DIRECT AND CONDUCT PROGRAMS RELATED TO THE PRODUCTION, CONSERVATION, USE, CONTROL, DISTRIBUTION AND ALLOCATION OF ALL FORMS OF ENERGY." THE ADMINISTRATOR WOULD ALSO ACT AS THE PRESIDENT'S ADVISER WITH RESPECT TO DOMESTIC AND FOREIGN POLICY RELATING TO ENERGY MATTERS. THE PROPOSAL THUS WOULD PROVIDE IN STATUTORY FORM THE GENERAL CHARTER ALREADY PROVIDED FOR THE FEDERAL ENERGY OFFICE ESTABLISHED BY EXECUTIVE ORDER NO. 11748 OF DECEMBER 4, 1973.

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NEEDLESS TO SAY, THE AUTHORITY WHICH WOULD BE PROVIDED TO THE ADMINISTRATOR, TAKEN IN CONJUNCTION WITH THE POSSIBLE ENACTMENT OF LEGISLATION ALONG THE LINES OF S. 2589, THE PROPOSED NATIONAL ENERGY EMERGENCY ACT OF 1973 AS PASSED BY THE SENATE, WOULD BE A MOST POWERFUL ONE, INDEED. THE FINAL JUDGMENT OF THE CONGRESS IS NOT CLEAR WITH RESPECT TO THE NATIONAL ENERGY EMERGENCY ACT SINCE SIMILAR LEGISLATION IS YET TO BE ACTED UPON IN THE HOUSE OF REPRESENTATIVES. HOWEVER, LEGISLATION ALONG THE LINES OF S. 2589 GIVING CONSIDERABLE AUTHORITY AND DISCRETION TO THE PRESIDENT APPEARS LIKELY. IT ALSO APPEARS LIKELY THAT MUCH OR ALL OF THIS AUTHORITY WOULD BE DELEGATED TO THE ADMINISTRATOR, THUS PLACING TREMENDOUS POWER AND RESPONSIBILITY IN THE PROPOSED FEDERAL ENERGY ADMINISTRATION.

NEED FOR A CENTRAL AGENCY

I DO NOT QUESTION THE NEED TO HAVE A FOCAL POINT TO DEAL EFFECTIVELY WITH ENERGY SHORTAGES. I AM NEVERTHELESS CONCERNED ABOUT THE SWEEPING LANGUAGE WHICH IS INCLUDED IN SECTION 3(A). THE BILL WOULD CHARGE THE ADMINISTRATOR WITH ALL ASPECTS OF ENERGY, IRRESPECTIVE OF THE FACT THAT MANY OF THE AUTHORITIES ARE PRESENTLY VESTED IN OTHER AGENCIES--THE REGULATORY AGENCIES, THE RURAL ELECTRIFICATION ADMINISTRATION, THE TENNESSEE VALLEY AUTHORITY, OTHER PARTS OF THE INTERIOR DEPARTMENT, AND SO ON. AS A SUGGESTION, CONGRESS MAY WISH TO CONSIDER LIMITING SECTION 3(A) TO POWERS AND FUNCTIONS WHICH WOULD BE AUTHORIZED IN THE NATIONAL ENERGY EMERGENCY ACT. THIS WOULD STILL RECOGNIZE IN SECTION 3 (B) THAT THE ADMINISTRATOR WOULD SERVE AS THE PRESIDENT'S ADVISER WITH RESPECT TO ALL ASPECTS OF THE ENERGY PROBLEM.

SECTION 4(A) AND (B) OF THE BILL WOULD TRANSFER THE FUNCTIONS OF CERTAIN AGENCIES TO THE FEDERAL ENERGY ADMINISTRATION. SECTION 4(C) OF THE BILL AS PROPOSED BY THE ADMINISTRATOR (BUT NOT INCLUDED IN H.R. 11793 INTRODUCED BY CHAIRMAN HOLIFIELD) WOULD PROVIDE AUTHORITY FOR THE PRESIDENT TO TRANSFER TO THE ADMINISTRATOR ADDITIONAL FUNCTIONS AFTER NOTIFYING THE CONGRESS OF SUCH TRANSFERS. THE TRANSFERS WOULD BECOME EFFECTIVE AFTER 60 CALENDAR DAYS UNLESS EITHER THE HOUSE OR SENATE ADOPTS RESOLUTIONS DISAPPROVING THEM. I QUESTION THE ADVISABILITY OF THE INCLUSION OF THIS AUTHORITY. THE CONGRESS SHOULD HAVE AN OPPORTUNITY TO REVIEW THE ENTIRE PROGRAM AGAIN OVER THE NEXT SEVERAL MONTHS TO ENABLE IT TO EXAMINE THE NEED FOR REORGANIZATIONS OR ADDITIONAL AUTHORITIES WHICH MAY BE RECOMMENDED BY THE PRESIDENT.

IN ADDITION, THE CONGRESS HAS BEFORE IT A LEGISLATIVE PROPOSAL FOR AN ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION. SECTION 4(C) OF THE ADMINISTRATION'S PROPOSAL WOULD MAKE IT POSSIBLE FOR THE PRESIDENT TO TRANSFER ACTIVITIES FROM THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION TO THE FEDERAL ENERGY ADMINISTRATION UNDER THE PROCEDURE SPECIFIED. WHILE THE BILL MAKES NO REFERENCE TO THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, I ASSUME THAT THE CONGRESS DOES NOT INTEND THAT THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, IF ESTABLISHED, WOULD BECOME A PART OF, OR BE SUBJECT TO, THE DIRECTION OF THE FEDERAL ENERGY ADMINISTRATION WITHOUT FURTHER CONGRESSIONAL CONSIDERATION. LANGUAGE MIGHT BE INCLUDED IN THE BILL TO MAKE THIS CLEAR.

IN SHORT, I SEE NO SPECIAL NEED FOR SECTION 4 (C) AUTHORITY AND BELIEVE THAT IT MIGHT COMPLICATE CONGRESSIONAL CONSIDERATION OF THE LONGER-TERM ENERGY ORGANIZATION PICTURE.

ALSO SUBJECT TO QUESTION IS THE PROVISION IN SECTION 4(C) OF THE ADMINISTRATION'S BILL WHICH WOULD AUTHORIZE THE PRESIDENT TO RETRANSFER ANY FUNCTION THAT WAS TRANSFERRED TO THE FEDERAL ENERGY ADMINISTRATION BACK TO ITS FORMER AGENCY. SUCH RETRANSFERS SHOULD BE SUBJECT TO CONGRESSIONAL APPROVAL.

COORDINATION OF ENERGY DATA COLLECTION AND ANALYSIS

ACCORDING TO THE BACKGROUND MATERIAL ACCOMPANYING THE BILL, THE NEW AGENCY WOULD HAVE THE PRINCIPAL RESPONSIBILITY THROUGHOUT THE GOVERNMENT FOR THE COLLECTION AND PUBLICATION OF ENERGY STATISTICS. THE PRESENT ENERGY DATA COLLECTION SYSTEM IS LARGELY VOLUNTARY. THE STATEMENT IS MADE IN THE BACKGROUND MATERIAL THAT "IT IS IMPERATIVE THAT STATUTORY AUTHORITY EXISTS TO OBTAIN WHATEVER INFORMATION MAY BE REQUIRED." THE BILL, HOWEVER, DOES NOT CONTAIN LANGUAGE WHICH WOULD PROVIDE SUCH AUTHORITY.

THE GENERAL ACCOUNTING OFFICE IS PRESENTLY CONDUCTING A STUDY OF FEDERAL ENERGY DATA COLLECTION FOR THE SENATE INTERIOR AND INSULAR AFFAIRS COMMITTEE. A FEW PRELIMINARY FINDINGS AND OBSERVATIONS ARE RELEVANT TO THE PROPOSAL BEFORE YOU.

--WE HAVE VISITED 17 FEDERAL AGENCIES COMPRISING 47 BUREAUS, OFFICES, DIVISIONS, AND ADMINISTRATIONS WHICH ARE COLLECTORS OR USERS OF ENERGY DATA. WE ARE IN THE PROCESS OF IDENTIFYING STILL OTHERS.

--AN ANALYSIS OF OFFICE OF MANAGEMENT AND BUDGET INFORMATION INDICATES THAT, AS OF MARCH 1973, 15 MAJOR FEDERAL AGENCIES WERE CIRCULATING 145 QUESTIONNAIRES AND FORMS TO PRIVATE INDUSTRY AND STATES REQUESTING ENERGY-RELATED DATA. THE QUESTIONNAIRES

CONSISTED OF SOME 11 MILLION RESPONSES REQUIRING RESPONDENTS TO SPEND AN ANNUAL EFFORT OF ABOUT 3.6 MILLION MAN-HOURS.

--A GREAT DEAL OF DATA IS ALREADY BEING COLLECTED BY NUMEROUS FEDERAL AGENCIES TO MEET THEIR OWN PURPOSES, BUT THERE IS A NEED FOR GREATER CENTRALIZATION OF ENERGY DATA COLLECTION.

--MOST OF THE DATA IS REPORTED VOLUNTARILY, EXCEPT FOR THAT COLLECTED BY THE FEDERAL POWER COMMISSION FOR REGULATORY PURPOSES, FOR ADMINISTERING THE LEASING OF FEDERAL LANDS AND THE OUTER CONTINENTAL SHELF FOR MINERAL EXPLORATION, AND ON IMPORTS. THUS, THERE IS A NEED FOR STATUTORY AUTHORITY TO REQUIRE THE REPORTING OF NEEDED ENERGY DATA.

--QUESTIONS ARE BEING RAISED ABOUT THE CREDIBILITY OF EXISTING ENERGY DATA BECAUSE IT IS REPORTED VOLUNTARILY BY INDUSTRY AND NOT VERIFIED. THUS, THERE IS A NEED ALSO FOR SPECIFIC STATUTORY SUPPORT FOR SYSTEMATIC DATA VERIFICATION. CREDIBILITY OF THE DATA ON WHICH POLICY DECISIONS ARE BASED IS ESSENTIAL TO THE SUCCESSFUL OPERATION OF THE NEW ADMINISTRATION. APPROPRIATE VERIFICATION PROVISIONS IN THE LEGISLATION SHOULD PROVIDE THE NEW AGENCY WITH ACCESS TO RECORDS AND OTHER DOCUMENTATION WHICH PRIVATE FIRMS HAVE IN SUPPORT OF DATA REPORTED TO THE GOVERNMENT, AS WELL AS ACCESS TO RECORDS AND OTHER DOCUMENTATION WHICH OTHER FEDERAL AGENCIES HAVE IN THEIR FILES AS A RESULT OF THEIR DATA COLLECTION.

--THE QUESTION OF CONFIDENTIALITY OF COMPANY DATA WILL HAVE TO BE CAREFULLY CONSIDERED. AT PRESENT, ALL COMPANY DATA IS CONSIDERED CONFIDENTIAL AND, WITH VERY LIMITED EXCEPTIONS, ONLY AGGREGATE DATA IS DISCLOSED CONTRIBUTING FURTHER TO THE EXISTING LACK OF CREDIBILITY.

INTERAGENCY COORDINATION

THE BACKGROUND MATERIAL ACCOMPANYING THE PRESIDENT'S PROPOSAL STATES THAT THE NEW AGENCY WOULD BE CHARGED WITH FACILITATING THE IMPLEMENTATION OF THE PRESIDENT'S PROGRAM TO DEVELOP THE CAPABILITY FOR NATIONAL SELF-SUFFICIENCY IN ENERGY SUPPLIES. THIS WOULD BE ACCOMPLISHED, AMONG OTHER THINGS, BY EXPEDITING THE ALASKA PIPELINE CONSTRUCTION; ACCELERATING THE LEASING OF THE OUTER CONTINENTAL SHELF, COAL, AND SHALE LANDS; EXPEDITING THE CONSTRUCTION OF NUCLEAR AND NON-NUCLEAR POWER PLANTS AND ENERGY FACILITIES; AND FACILITATING INCREASES IN COAL PRODUCTION. THE LEGISLATION DOES NOT INCLUDE LANGUAGE INDICATING HOW THIS RESPONSIBILITY WILL BE CARRIED OUT AND/OR COORDINATED WITH AGENCIES WHICH RETAIN PROGRAM RESPONSIBILITIES SUCH AS THE DEPARTMENT OF THE INTERIOR AND THE PROPOSED NUCLEAR ENERGY COMMISSION.

FOR THIS REASON, I BELIEVE THAT AN INTERAGENCY NATIONAL ENERGY POLICY COUNCIL SHOULD BE ESTABLISHED TO ADVISE THE PRESIDENT AND THE ADMINISTRATOR OF THE FEDERAL ENERGY ADMINISTRATION. THE HEAD OF THE PROPOSED ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION MOST CERTAINLY SHOULD BE A MEMBER OF ANY SUCH COUNCIL. I WOULD ASSUME THAT THE HEAD OF THE COST OF LIVING COUNCIL AND THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY WOULD SIMILARLY QUALIFY AS MEMBERS.

THE ADMINISTRATION'S PROPOSAL CONTEMPLATES THE TRANSFER OF THE FUNCTIONS OF THE COST OF LIVING COUNCIL AS THEY "RELATE TO OR ARE UTILIZED BY THE ENERGY DIVISION OF THE COST OF LIVING COUNCIL." WHILE I AM CERTAIN THAT THE PROPOSED AGENCY WOULD NEED TO HAVE A CAPABILITY OF MAKING ANALYSES OF THE EFFECT OF PRICE ADJUSTMENTS UPON THE SUPPLY AND DISTRIBUTION OF ENERGY, IT IS NOT AT ALL CLEAR TO ME WHY THE FUNCTION OF THE COST OF LIVING COUNCIL NEEDS TO BE

OR SHOULD BE TRANSFERRED. I DO NOT BELIEVE IT PRACTICAL OR DESIRABLE TO SEPARATE OUT ENERGY PRICE DETERMINATIONS FROM THEIR EFFECT ON THE COST OF ENERGY AND HENCE OTHER PARTS OF THE TOTAL COST OF LIVING PROGRAM.

THE ROLES OF BOTH THE COST OF LIVING COUNCIL AND THE ENVIRONMENTAL PROTECTION AGENCY ARE PARTICULARLY IMPORTANT. WHILE NATIONAL POLICY SHOULD DICTATE THAT ALL PRACTICAL STEPS BE TAKEN TO INCREASE PRODUCTION OF ENERGY AND IMPROVE ITS DISTRIBUTION, THERE ARE OBVIOUSLY TWO OTHER MAJOR OBJECTIVES WHICH ARE AT LEAST PARTIALLY IN CONFLICT, NAMELY TO MINIMIZE PRICE INCREASES AND TO PROTECT THE ENVIRONMENT. HOW SHOULD THIS POTENTIAL CONFLICT BE DEALT WITH IN THIS LEGISLATION?

--ONE ALTERNATIVE WOULD BE TO GIVE THE ENVIRONMENTAL PROTECTION AGENCY AND THE COST OF LIVING COUNCIL A VETO OVER THE ACTIONS OF THE FEDERAL ENERGY ADMINISTRATION, PERHAPS WITHIN A SPECIFIED TIME LIMIT.

--ANOTHER ALTERNATIVE WOULD BE TO REQUIRE ANY DISAGREEMENTS TO BE MADE THE SUBJECT OF PUBLIC HEARINGS AND/OR A REQUIREMENT TO HAVE THE MATTER LAY BEFORE THE CONGRESS FOR A SPECIFIED PERIOD OF TIME BEFORE BECOMING EFFECTIVE.

--AS A MINIMUM, THE STATUTE SHOULD SPECIFY THAT ACTIONS AFFECTING PRICES AND CHANGES IN ENVIRONMENTAL STANDARDS BE TAKEN ONLY AFTER CONSULTATION WITH THE COST OF LIVING COUNCIL AND THE ENVIRONMENTAL PROTECTION AGENCY AND REPORTING THEREON TO THE CONGRESS.

ATTENTION IS CALLED TO SECTION 206 OF S. 2589 WHICH WOULD REQUIRE FULL CONFORMITY TO THE PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 IF ACTIONS ARE TAKEN WHICH WOULD EXTEND BEYOND A PERIOD OF ONE YEAR.

ALSO RELEVANT IS SECTION 311 OF S. 2589 WHICH WOULD REQUIRE ANY AGENCY PERFORMING FUNCTIONS UNDER THE ACT TO HOLD PUBLIC HEARINGS IF THE AGENCY, IN ITS DISCRETION, DETERMINES THAT SUCH ACTIONS "ARE LIKELY TO HAVE A SUBSTANTIAL IMPACT ON THE NATION'S ECONOMY OR LARGE NUMBERS OF INDIVIDUALS OR BUSINESSES."

SECTION 5(9) WOULD AUTHORIZE THE ADMINISTRATOR OF THE FEDERAL ENERGY ADMINISTRATION, SUBJECT TO APPROPRIATION ACTS, TO ENTER INTO AND PERFORM CONTRACTS, LEASES, COOPERATIVE AGREEMENTS, OR OTHER TRANSACTIONS WITH ANY PUBLIC OR PRIVATE AGENCY OR PERSON. THIS LANGUAGE REFERRING TO "OTHER TRANSACTIONS" SEEMS OVERLY BROAD, AND IT MAY BE DESIRABLE TO SPECIFY EXACTLY WHAT IS INTENDED BY THE LEGISLATION IF THE FEDERAL ENERGY ADMINISTRATION IS TO BE EMPOWERED TO MAKE LOANS OR GRANTS.

THE BILL DOES NOT INCLUDE AUTHORITY OF THE COMPTROLLER GENERAL TO AUDIT THE RECORDS OF CONTRACTORS, GRANTEEES AND OTHER RECIPIENTS OF FUNDS PROVIDED BY THE NEW AGENCY UNDER SECTION 5 (9). SUCH AUTHORITY SHOULD BE PROVIDED.

CONCLUSION

IN SUMMARY, I FAVOR LEGISLATION TO STRENGTHEN EXECUTIVE BRANCH LEADERSHIP IN ENERGY PROGRAMS AND BELIEVE THAT A FEDERAL ENERGY ADMINISTRATION, AS MODIFIED TO INCORPORATE THE PROPOSALS WHICH I HAVE MADE, WOULD DO THIS. IT SHOULD NOT, HOWEVER, BE CONSIDERED AS A LONG RUN SUBSTITUTE FOR A DEPARTMENT WHICH WOULD EMBRACE RELATED NATURAL RESOURCES FUNCTIONS. THE ENERGY AND THE NATURAL RESOURCES PROBLEM ARE GOING TO BE WITH US FOR A LONG, LONG TIME AND I DO NOT BELIEVE THAT ANYONE SHOULD FEEL THAT WE HAVE THE

ULTIMATE ORGANIZATIONAL SOLUTION IN THIS PROPOSAL. THE AUTHORITY OF THE ADMINISTRATION SHOULD BE TEMPORARY IN NATURE AND SUBJECT TO FURTHER REVIEW BY THE CONGRESS DURING ITS NEXT SESSION.

THAT THERE IS AN ENERGY EMERGENCY IS BEYOND QUESTION. THE ACTIONS FLOWING FROM THE EMERGENCY TO DATE HAVE BEEN TENTATIVE FOR THE MOST PART AND MUCH NEEDS TO BE DONE BY WAY OF ADDITIONAL PLANNING. ALL THIS ADDS UP IN MY MIND TO THE NEED FOR APPROACHING ANY LONG-TERM ORGANIZATIONAL ARRANGEMENT CAUTIOUSLY AND TO PROCEEDING ON THE BASIS THAT THE LIFE OF THE ORGANIZATION SHOULD BE LIMITED AND SUBJECT TO REVIEW IN THE LIGHT OF CHANGING CIRCUMSTANCES. I WOULD, THEREFORE, FAVOR LIMITING THE LIFE OF THE ADMINISTRATION TO ONE YEAR.

TO UNDERSCORE THE INTERIM OR TEMPORARY NATURE OF THE AGENCY, THE TITLE OF THE ENACTMENT MIGHT BE CHANGED TO THE "TEMPORARY ENERGY ACT OF 1973," OR THE "FEDERAL EMERGENCY ENERGY ADMINISTRATION ACT OF 1973."